IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.14468 of 2002
Date of Decision: 6.11.2007

Om Parkash and others .....Petitioners

Vs.

State of Haryana and others ...Respondents

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CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

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Present : Mr.G.C. Dhuriwala, Advocate for the petitioners.
Mr.Ashish Kapoor, Addl.A.G. Haryana with Ms.Ritu Punj, DAG, Haryana.

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RAJIVE BHALLA, J

This order shall dispose of C.W.P.Nos.14468 of 2002, 10338 of 2004, 2799 of 2006 and 6198 of 2007.

The petitioners herein, pray for issuance of a writ in the nature of Certiorari for quashing the notifications issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act').

Before we proceed to adjudicate the petitions, it would be necessary to make a brief reference to the relevant facts of each case.

In **CWP No.14468 of 2002**, apart from Joginder Singh, petitioner no.25, land of other petitioners, numbering 34 has been released. The dispute in essence is that the surviving petitioner No. 25 claims to have raised a residential unit, over the land in dispute and, therefore, prays that

his land be released from the rigours of acquisition, on the principle of parity.

In CWP No.10338 of 2004, the only assertion put forth by counsel for the petitioners, is that their houses, which were in existence, prior to the issuance of notification under Section 4 be released, as houses of similarly situated persons/land-owners have been released. It is argued that by declining to release the petitioners houses, the respondents have violated Article 14 of the Constitution of India.

In CWP No.2799 of 2006, the petitioners claim that they have raised `A' class constructions, namely; residential houses, which should be released from acquisition, as similarly constructed houses of other land-owners have been released, and has been admitted by the respondents.

In CWP No.6198 of 2007, the petitioner claims to have purchased 2 acres of land in the revenue estate of Village Nadha for developing a nursery. It is stated that the petitioner has planted several thousands plants, has raised temporary sheds to protect and nourish the plants and is running a nursery. . He has also constructed four rooms. It is contended by counsel for the petitioner that as houses/structures of other similarly situated land-owners have been released, the State should release the petitioner's land, as there is no ostensible difference between the petitioner's case and that of land-owners, whose land has been released.

In essence, the petitioners plead and urge that as the State has released the houses/structures of similarly situated land-owners, its refusal to release the petitioners lands, is violative of Article 14 of the Constitution of India.

The State of Haryana, issued a notification dated 27.3.2001

under Section 4 of the Act, proposing to acquire land, measuring 117.52 Acres in Village Nadha, Tehsil and District Panchkula, for a public purpose, namely; for development and utilisation of the land for residential and commercial Sector 31. The petitioners allege that they filed objections under Section 5-A, praying that their houses be released from acquisition. The State Government, however, issued a declaration dated 26.3.2002, under Section 6 of the Act.

Counsel for the petitioners contends that all houses/structures, excluding those belonging to the petitioners have been released whether constructed prior to or during the pendency of the present petitions and a perusal of the site plan, filed by the respondents, bears out the aforementioned fact. It is further submitted that as the State of Haryana has framed a policy, whereunder all houses in existence on the date of the notification under Section 4 of the Act, are to be released, the action of the respondents in not releasing the petitioners land is illegal and arbitrary. It is argued that the averments in the reply that only such houses/constructions as were contiguous and constituted five compact blocks have been released is insufficient to decline relief to the petitioners. It is submitted that the policy, as regards release of land, applies irrespective of contiguity or blocks and, therefore, the present writ petitions be allowed. Consequently, the action of the State in declining to release the petitioners land is violative of Article 14 of the Constitution of India.

Counsel for the State of Haryana, on the other hand, submits that though it is true that the State has released residences. Their release was ordered, after the land was surveyed and it was discovered that a large number of structures/residences existing in close proximity could be

broadly divided into five blocks. Consequently, and in order to alleviate the hardship likely to be suffered, release was recommended.

The petitioners houses/structures, on the other hand, being scattered and not contiguous to any of the five blocks, were not found suitable for release. It is, therefore, submitted that as an intelligible differentia exists between the petitioners houses/structures and the five blocks released, the respondents refusal to release the petitioners houses does not suffer from the vice of discrimination.

We have heard learned counsel for the parties, perused the paper book as also the site plan.

On the basis of the record supplied by the Land Acquisition Collector, through Sh. Rajinder Parshad, Patwari, who is present in Court, the Additional Advocate General, Haryana, states that no land/structures other than those in the five blocks, indicated in the site plan have been released.

A perusal of the site plan, discloses that the petitioners houses have been acquired, whereas houses, belonging to other land-owners have been released. As submitted by counsel for the respondent-State of Haryana, the released houses fall in five distinct and separate blocks., which comprise of contiguous residential structures, existing in close proximity.

The petitioners houses on the other hand, as is apparent from the site plan, placed on record, are scattered around the acquired land and are neither contiguous nor in close proximity to any of the five blocks, land whereof has been released. The prayer for release was, therefore, rightly declined by the State. In our considered opinion, the respondents have successfully established an intelligible differentia between the released

houses and the petitioners houses. For a classification to be valid, it must be based upon an intelligible criteria, which should distinguish persons or groups granted a benefit from those left out. The difference, must be real and substantial and not illusory.

We are satisfied that the State, while taking a decision to release only those structures, which fell within compact blocks comprising of contiguous structures created two categories of structures, the first where the structures were situated in a compact block and the second where they are scattered over the land in dispute. The petitioners houses fall in the second category. The categories carved out, in our considered opinion, do not suffer from the vice of discrimination, as the petitioners land/structures do not fall within any of the five compact blocks, land whereof has been released. The release of structures existing in five compact blocks and the refusal of the respondents to release the petitioners houses, in our considered opinion, do not suffer from the vice of discrimination and clothe the petitioners with a right to invoke Article 14 of the Constitution of India. There is no dispute that the State in the exercise of its power of eminent domain and in view of the definition of the word `land' in the Act may acquire land with structures. Thus, the petitioners contentions that their houses cannot be acquired or that they have been discriminated against do not merit acceptance.

As no other point has been urged before us, we are constrained to hold that the impugned proceedings for acquisition do not suffer from any error, as would warrant interference.

In view of what has been stated herein above, we do not find any merit in the present petitions, which are accordingly dismissed with no

order as to costs.

(RAJIVE BHALLA)
JUDGE

6.11.2007
GS

(UMA NATH SINGH)
JUDGE